

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 2:15-cr-24-FtM-38MRM

HENRY AMEN

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**ORDER**<sup>1</sup>

Before the Court is Defendant Henry Amen's Motion for Termination of Probation ([Doc. 69](#)), and the Government's response in opposition ([Doc. 71](#)). For the below reasons, the Court denies the motion.

More than four years ago, the Court sentenced Amen to five years of probation for making false statements to a financial institution. ([Doc. 49](#)). The Court also ordered home detention for one year and restitution for \$1,135,995.20. His term of probation is set to expire in about six months (January 2021).

Amen now moves to end his probation early because he has completed all conditions of probation and made some restitution payments. He also says that he is 83 years old, has health issues, lost his wife of 58 years, and "hopes to face his last days" with this sentence behind him. ([Doc. 69](#)).

The Government and United States Probation Office oppose Amen's motion because he has paid only a fraction of the restitution—\$2,817.00 to be exact—leaving more than one million dollars unpaid. He also moved residences last summer without

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<sup>1</sup> Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

asking or advising his probation officer. And, as of last month, he still reported to be living at his old address. (Doc. 72).<sup>2</sup>

A court may terminate a term of probation under [18 U.S.C. § 3564\(c\)](#). That subsection says,

The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant . . . at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

[18 U.S.C. § 3564\(c\)](#). The § 3553(a) factors include the nature and circumstances of the offense and the history and characteristics of the defendant; the need for deterrence, for public protection, and for correctional treatment for the defendant; the advisory guidelines range; the U.S. Sentencing Commission's policy statements; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to any victims. [18 U.S.C. § 3553\(a\)](#).

After considering the § 3553(a) factors against the record, the Court finds early termination of Amen's probation to be unwarranted and against the interest of justice. At the time of sentencing, the Court found a five-term of probation to be sufficient but not greater than necessary sentence to comply with the statutory purposes of sentencing. In again considering the § 3553(a) factors and Amen's conduct since sentencing, the Court's decision on the appropriate term of probation remains the same. Amen pleaded guilty to lying on a loan application, which lead to over a million dollars in restitution. And in the

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<sup>2</sup> On July 10, 2020, the United States Probation Office reported Amen for lying about his place of residence. The Court, on the Probation Office's recommendation, took no action on the violation. ([Doc. 73](#)).

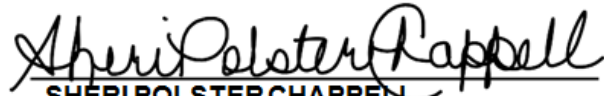
four plus years since sentencing, he has only paid a fraction of the restitution. Amen's recent violation of his probation terms also persuades the Court against ending probation early. The Court thus stands by its originally ordered term of probation imposed because of the seriousness of his offense, to afford adequate deterrence to criminal conduct, and to ensure his continued payment of restitution.

Accordingly, it is now

**ORDERED:**

Defendant Henry Amen's Motion for Termination of Probation ([Doc. 69](#)) is **DENIED.**

**DONE AND ORDERED** in Fort Myers, Florida on this 13th day of July 2020.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: Counsel of Record